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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:
12 SAV MART DRUGS
2000 N. Hollywood Way
13 Burbank, CA 91505
GERALD PAGE, aka JERRY A. PAGE,
14 President, Pharmacist-In-Charge
NORA PAGE, Secretary
15 Original Pharmacy Permit No. PHY 19709,
16
and
17 JERRY A. PAGE
18 23679 Calabasas Road, #534
Calabasas, CA 91302
19 Pharmacist License No. RPH 23356

20 Respondents.

Case No. 3155

ACCUSATION

21
22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her
25 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
26 Consumer Affairs.
- 27 2. On or about October 13, 1977, the Board issued Original Pharmacy Permit
28 No. PHY 19709 to Gerald Page Inc., to do business as Sav Mart Drugs, with Gerald Page, also

known as, Jerry A. Page, as President/Pharmacist-in-Charge and Nora Page, as Secretary (Respondent Sav Mart). The Original Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and was canceled due to the discontinuance of business on or about October 25, 2006.

3. On or about February 4, 1964, the Board of Pharmacy issued Original Pharmacist License No. RPH 23356 to Jerry A. Page, also known as Gerald Page (Respondent Page). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expired on April 30, 2009, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 4300 of the Code provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

"(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

....

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

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1 7. Section 4302 of the Code states:

2 “The board may deny, suspend, or revoke any license of a corporation where
3 conditions exist in relation to any person holding 10 percent or more of the corporate stock of the
4 corporation, or where conditions exist in relation to any officer or director of the corporation that
5 would constitute grounds for disciplinary action against a licensee.”

6 8. Section 4113 of the Code states:

7 “(a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days
8 thereof, shall notify the board in writing of the identity and license number of that pharmacist
9 and the date he or she was designated.

10 (b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
11 with all state and federal laws and regulations pertaining to the practice of pharmacy.”

12 9. Section 4040 of the Code states, in pertinent part:

13 “(b) Notwithstanding subdivision (a), a written order of the prescriber for a
14 dangerous drug, except for any Schedule II controlled substance, that contains at least the name
15 and signature of the prescriber, the name and address of the patient in a manner consistent with
16 paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and
17 quantity of the drug prescribed, directions for use, and the date of issue may be treated as a
18 prescription by the dispensing pharmacist as long as any additional information required by
19 subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this
20 subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and
21 Safety Code shall prevail.”

22 10. Section 4063 of the Code states:

23 “No prescription for any dangerous drug or dangerous device may be refilled
24 except upon authorization of the prescriber. The authorization may be given orally or at the time
25 of giving the original prescription. No prescription for any dangerous drug that is a controlled
26 substance may be designated refillable as needed.”

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11. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

"(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

"(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate."

12. Section 4115 of the Code states:

"(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of a pharmacist.

....

"(f)(1) A pharmacy with only one pharmacist shall have no more than one pharmacy technician performing the tasks specified in subdivision (a). The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to any additional pharmacist shall not exceed 2:1, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an

1 inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in
2 paragraph (2), an inmate of a correctional facility of the Department of the Youth Authority or
3 the Department of Corrections, and for a person receiving treatment in a facility operated by the
4 State Department of Mental Health, the State Department of Developmental Services, or the
5 Department of Veterans Affairs.”

6 13. Section 4306.5 of the Code states:

7 “Unprofessional conduct for a pharmacist may include any of the following:

8 (a) Acts or omissions that involve, in whole or in part, the inappropriate exercise
9 of his or her education, training, or experience as a pharmacist, whether or not the act or
10 omission arises in the course of the practice of pharmacy or the ownership, management,
11 administration, or operation of a pharmacy or other entity licensed by the board.

12 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or
13 implement his or her best professional judgment or corresponding responsibility with regard to
14 the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or
15 with regard to the provision of services.

16 (c) Acts or omissions that involve, in whole or in part, the failure to consult
17 appropriate patient, prescription, and other records pertaining to the performance of any
18 pharmacy function.

19 (d) Acts or omissions that involve, in whole or in part, the failure to fully
20 maintain and retain appropriate patient-specific information pertaining to the performance of any
21 pharmacy function.”

22 14. Section 4332 of the Code states:

23 “Any person who fails, neglects, or refuses to maintain the records required by
24 Section 4081 or who, when called upon by an authorized officer or a member of the board, fails,
25 neglects, or refuses to produce or provide the records within a reasonable time, or who willfully
26 produces or furnishes records that are false, is guilty of a misdemeanor.”

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1 15. Health and Safety Code section 11153 states:

2 “(a) A prescription for a controlled substance shall only be issued for a legitimate
3 medical purpose by an individual practitioner acting in the usual course of his or her professional
4 practice. The responsibility for the proper prescribing and dispensing of controlled substances is
5 upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist
6 who fills the prescription. Except as authorized by this division, the following are not legal
7 prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course
8 of professional treatment or in legitimate and authorized research; or (2) an order for an addict or
9 habitual user of controlled substances, which is issued not in the course of professional treatment
10 or as part of an authorized narcotic treatment program, for the purpose of providing the user with
11 controlled substances, sufficient to keep him or her comfortable by maintaining customary use.”

12 16. California Code of Regulations, title 16, section 1707.3 states:

13 “Prior to consultation as set forth in section 1707.2, a pharmacist shall review a
14 patient's drug therapy and medication record before each prescription drug is delivered. The
15 review shall include screening for severe potential drug therapy problems.”

16 17. California Code of Regulations, title 16, section 1717 states, in pertinent
17 part:

18 “(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist
19 shall reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the
20 prescription is then dispensed by another pharmacist, the dispensing pharmacist shall also initial
21 the prescription to identify him or herself. All orally transmitted prescriptions shall be received
22 and transcribed by a pharmacist prior to compounding, filling, dispensing, or furnishing. Chart
23 orders as defined in Section 4019 of the Business and Professions Code are not subject to the
24 provisions of this subsection.”

25 18. California Code of Regulations, title 16, section 1761 states:

26 “(a) No pharmacist shall compound or dispense any prescription which contains
27 any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of

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1 any such prescription, the pharmacist shall contact the prescriber to obtain the information
2 needed to validate the prescription.

3 (b) Even after conferring with the prescriber, a pharmacist shall not compound or
4 dispense a controlled substance prescription where the pharmacist knows or has objective reason
5 to know that said prescription was not issued for a legitimate medical purpose.”

6 19. Section 118, subdivision (b), of the Code provides that the suspension,
7 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
8 proceed with a disciplinary action during the period within which the license may be renewed,
9 restored, reissued or reinstated.

10 20. Section 125.3 of the Code provides, in pertinent part, that the Board may
11 request the administrative law judge to direct a licensee found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

14 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

15 A. “Xanax” is the brand name for Alprazolam. It is a Schedule IV controlled
16 substance as defined in Health and Safety Code section 11057, subdivision (d)(1), and is
17 classified as “dangerous drug pursuant to Business and Professions Code section 4022.

18 B. “Vicodin,” “Lorcet,” “Norco,” “Vicodin ES,” “Vicodin HP,” and “Lorcet
19 10/650” are brand names for Hydrocodone/Acetaminophen (APAP). It is a Schedule III
20 controlled substance as defined in Health and Safety Code section 11056, subdivision (4)(e), and
21 is classified as a “dangerous drug” pursuant to Business and Professions Code section 4022.

22 C. “Soma” is the brand name for Carisoprodol, which is classified as a
23 dangerous drug pursuant to Business and Professions Code section 4022.

24 FIRST CAUSE FOR DISCIPLINE

25 (Failure to Maintain and Provide Complete Records)

26 21. Respondent Sav Mart and Respondent Page are subject to discipline
27 pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of

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unprofessional conduct, in that Respondent Sav Mart and Respondent Page violated Code sections 4081 and 4332. The circumstances are as follows:

a. A Board inspector requested that Respondents supply all original prescriptions for Patient R. Merriman.¹ After comparing the patient profile of Patient R. Merriman with the prescriptions supplied by Respondents, it was determined that Respondents failed to provide the following prescriptions to the Board's inspector: Rx 14392, Rx 983770, Rx 984329, Rx 986426, Rx 986798, Rx 987323, Rx 987941, Rx 988395, Rx 994071 (9 prescriptions for carisoprodol); Rx 9857, Rx 983705, Rx 984331, Rx 986425, Rx 986797, Rx 987322, Rx 987942, Rx 988394, Rx 995378 (9 prescriptions for hydrocodone/APAP); and, Rx 995379, Rx 991973, Rx 9858, Rx 18020, Rx 984330, Rx 986588, and Rx 987943 (7 prescriptions for alprazolam).

SECOND CAUSE FOR DISCIPLINE

(Failure to Review Patient Profile)

22. Respondent Sav Mart and Respondent Page are subject to discipline pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of unprofessional conduct, in that Respondents failed to review patient profiles prior to dispensing prescriptions, in violation of Code section 4306.5, subdivision (c), and California Code of Regulations, title 16, sections 1707.3. The circumstances are as follows:

a. **Patient R. Merriman:** Respondent Page filled 104 prescriptions for Patient R. Merriman early, namely Soma, Vicodin and Xanax, without reviewing Patient R. Merriman's patient profile, resulting in over dispensing of controlled substances, and/or, dangerous drugs.

b. **Patient R. Mazolla:** Respondent Page filled 17 prescriptions for Patient R. Mazolla early, namely, Norco, Valium and Xanax, without reviewing Patient R. Mazolla's patient profile, resulting in over dispensing of controlled substances, and/or, dangerous drugs.

1. For purposes of patient confidentiality, all patients are referred to by their first initial and last name. Upon a proper request for discovery, all patient records will be made available to Respondents.

1 c. **Patient S. Daniels:** Respondent Page filled 62 prescriptions for Patient S.
2 Daniels early, namely Hydrocodone/APAP, without reviewing Patient S. Daniels' patient profile,
3 resulting in over dispensing of controlled substances, and/or, dangerous drugs.

4 THIRD CAUSE FOR DISCIPLINE

5 (Failure to Exercise Professional Judgment)

6 23. Respondent Sav Mart and Respondent Page are subject to discipline
7 pursuant to Code sections 4300, 4301, subdivisions (j) and (o), 4302, and 4113, on the grounds
8 of unprofessional conduct, in that Respondent Page failed to exercise professional judgment in
9 violation of Code section 4306.5, subdivision (b), Health and Safety Code section 11153, and
10 California Code of Regulations, title 16, section 1761. The circumstances are as follows:

11 a. **Patient R. Merriman:** Respondent Page failed to use professional
12 judgment in filling Patient R. Merriman's prescriptions for Vicodin ES. In or between June 29,
13 2001 and June 9, 2003, Respondents dispensed excessive amounts of Vicodin ES to Patient R.
14 Merriman. Specifically, Respondents dispensed 9,870 tablets of Vicodin ES to Patient R.
15 Merriman, which is an average of 13.5 tablets per day. The maximum recommended
16 acetaminophen dose is 4 grams per day, or 5.33 tablets per day.

17 b. **Patient S. Daniels:** Respondent Page failed to use professional judgment
18 in filling Patient S. Daniels' prescriptions for Hydrocodon/APAP. In or between January 3,
19 2005 and July 31, 2006, Respondents dispensed excessive amounts of Hydrocodone/APAP to
20 Patient S. Daniels. Specifically, Respondent Page dispensed a total of 13,550 tablets (9,235
21 grams) of Hydrocodone/APAP to Patient S. Daniels, which is an average twenty-four tablets per
22 day (16 grams per day, or one tablet per hour). The maximum recommended acetaminophen
23 dose is 4 grams per day (or, 5.33 tablets of 750mg strength, and/or, 8 tablets of 500mg strength,
24 per day).

25 FOURTH CAUSE FOR DISCIPLINE

26 (Failure to Meet Pharmacist-Technician Ratio)

27 24. Respondent Sav Mart and Respondent Page are subject to discipline
28 pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of

1 unprofessional conduct, for violating Code section 4115, subdivision (f)(1), in that during an
2 inspection of Respondent Sav Mart on or about September 15, 2006, a Board inspector
3 determined that two (2) technicians were performing technician related work, while only one (1)
4 pharmacist, Respondent Page, was on duty.

5 FIFTH CAUSE FOR DISCIPLINE

6 (Oral Prescription Requirements)

7 25. Respondent Sav Mart and Respondent Page are subject to discipline
8 pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of
9 unprofessional conduct, in that during an inspection of Respondent Sav Mart on or about
10 September 15, 2006, a Board investigator found 48 orally transmitted prescriptions that failed to
11 contain the initials of the pharmacist that took the prescription in violation of California Code of
12 Regulations, title 16, section 1717, subdivision (c).

13 SIXTH CAUSE FOR DISCIPLINE

14 (Prescription Requirements)

15 26. Respondent Sav Mart and Respondent Page are subject to discipline
16 pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of
17 unprofessional conduct, in that Respondents violated Code section 4040, subdivision (b), as
18 follows: during an inspection of Respondent Sav Mart on or about September 15, 2006, a Board
19 inspector found 22 telephone prescription orders which failed to contain the directions for use on
20 the prescription as required, as well as 48 prescriptions that failed to have complete dates as
21 required.

22 SEVENTH CAUSE FOR DISCIPLINE

23 (Unauthorized Prescriptions)

24 27. Respondent Sav Mart and Respondent Page are subject to discipline
25 pursuant to Code sections 4300, 4301, subdivision (o), 4302, and 4113, on the grounds of
26 unprofessional conduct, in that Respondents refilled 104 prescriptions for controlled substances,
27 and/or, dangerous drugs, without authorization, in violation of Code section 4063.

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1 Specifically, Respondent Page refilled unauthorized prescriptions which did not contain
2 authorized refills on the original prescription as follows:

- 3 a. **Patient V. Bautista:** 11 unauthorized prescriptions for Hydrocodone.
- 4 b. **Patient S. Daniels:** 80 unauthorized prescription refills for Hydrocodone.
- 5 c. **Patient C. Deperna:** 1 unauthorized prescription refill for
6 Hydrocodone/Ibuprofen and 1 unauthorized prescription refill for Hydrocodone/APAP.
- 7 d. **Patient T Mccorkle:** 12 unauthorized prescriptions for Hydrocodone.

8 EIGHTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 28. Respondent Sav Mart and Respondent Page are subject to discipline
11 pursuant to Code sections 4300 and 4301, 4302 and 4113, in that Respondents committed
12 unprofessional conduct, as more fully discussed in paragraphs 21 through 27, above.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Original Pharmacy Permit No. PHY 19709 issued
17 to Gerald Page Inc., to do business as Sav Mart Drugs, with Gerald Page, also known as Jerry A.
18 Page, as President/Pharmacist-in-Charge and Nora Page, as Secretary;

19 2. Revoking or suspending Pharmacist License Number RPH 23356, issued
20 to Jerry A. Page, also known as Gerald Page;

21 3. Ordering Sav Mart Drugs and Jerry A. Page, also known as Gerald Page,
22 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this
23 case, pursuant to Business and Professions Code section 125.3;

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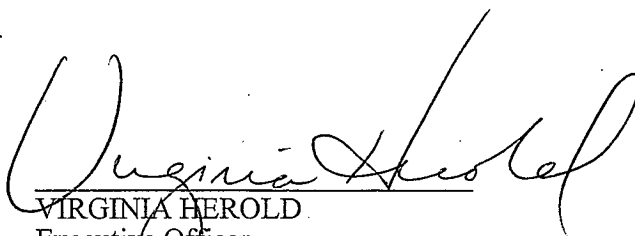
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4. Taking such other and further action as deemed necessary and proper.

DATED: 9/24/08



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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